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PATENT  
Docket No. SJO920030070US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: David T. Nay et al.

Serial No.: 10/822,255

Filed: April 10, 2004

For: **ADJUSTABLE RACK MOUNTABLE COMPUTER  
TERMINAL MOUNTING SYSTEM**

Examiner: Philip Francis Gabler

Group Art  
Unit: 3637

REPLY BRIEF

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Examiner:

The USPTO received Appellant's timely Appeal Brief on August 9, 2007, which was filed in response to the Notice of Appeal filed on June 11, 2007, which was filed in response to the Final Office Action mailed March 9, 2007.

This Reply Brief is being filed under the provisions of 37 C.F.R. § 41.41 and in response to the Examiner's Answer mailed September 27, 2007 (hereinafter Answer). Appellant continues to appeal the rejection of pending claims 1, 6-8, 14, and 22.

**1. REAL PARTY IN INTEREST**

The Answer acknowledges the identification of the real party in interest in the Appeal Brief filed August 9, 2007.

**2. RELATED APPEALS AND INTERFERENCES**

The Answer agrees with the recitation for this section in the Appeal Brief filed August 9, 2007.

### **3. STATUS OF CLAIMS**

The Answer agrees with the recitation for this section in the Appeal Brief filed August 9, 2007.

### **4. STATUS OF AMENDMENTS**

The Answer agrees with the recitation for this section in the Appeal Brief filed August 9, 2007.

### **5. SUMMARY OF CLAIMED SUBJECT MATTER**

The Answer agrees with the recitation for this section in the Appeal Brief filed August 9, 2007.

## **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The Answer agrees with the recitation of this section in the Appeal Brief filed August 9, 2007.

## **7. CLAIMS APPENDIX**

The Examiner's answer agrees with the recitation for this section in the Appeal Brief filed August 9, 2007.

## **8. EVIDENCE RELIED UPON**

The Answer cites United States Patent Number 6,201,690 to Moore et al. (hereinafter Moore), United States Patent Number 5,388,032 to Gill et al. (hereinafter Gill), United States Patent Number 5,549,374 to Krivec (hereinafter Krivec), and United States Patent Number 6,266,236 to Ku et al. (hereinafter Ku).

## **9. GROUNDS OF REJECTION**

The Answer maintains substantially the same grounds of rejection for claims 1, 6-8, 14, and 22, rejecting claims 1, 6-8, 14, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Moore in view of Gill, Krivec, and Ku.

## 10. ARGUMENT

I. **The rejection of claims 1, 6-8, 14, and 22 under 35 U.S.C. § 103(a) is improper because Moore, Gill, Krivec, and Ku fail to teach each element of the recited claims.**

### Summary of the Examiner's Answer in relation to this argument

[001] The Examiner maintains that Moore teaches a second frame with "...longitudinal frames and lateral frames forming a **horizontally disposed open rectangle** with a **first lateral frame connecting only to a proximal end of each longitudinal frame**, a **second lateral frame connecting only to a distal end of each longitudinal frame...**" as claimed in claims 1, 8, and 14. The Examiner cites a pair of pivot arms as disclosing the second frame. See Answer, page 6, lines 1-9; page, 7, annotated copy of Moore, Fig. 9. See also Moore, Fig. 9, ref. 43; col. 4, lines 42-43.

[002] In particular, the Examiner identifies the sides of the upper and lower pivot arms as longitudinal frames and the main surface of the pivot arms as the lateral frames. In addition, it appears from the annotated figure of the Answer that the Examiner maintains that the proximal end of the longitudinal frame is each entire side of the lower pivot arm, or in other words, an entire longitudinal frame, while the distal end of the longitudinal frame is each entire side of the upper pivot arm, or another entire longitudinal frame. See Answer, page 7, annotated copy of Moore, Fig. 9, (hereinafter Answer Figure). The Examiner further notes that "... the proximal and distal ends of the longitudinal frames are not the same as the proximal and distal edges of the second frame (B and C)..." Answer, page 6, lines 5-7, referring to Answer Figure, refs. B and C.

### Response

[003] Appellants disagree and respectfully reaffirm the arguments raised against the rejection of claims 1, 6-8, 14, and 22 under 35 U.S.C. § 103(a) as set forth in the Office Action mailed March 9, 2007. Appellants will discuss claim 1 with the understanding that the

arguments in support of claim 1 are equally applicable to independent claims 8 and 14. Appellants submit that the Examiner's assignment of labels to the elements of Moore distorts the geometry claimed by the present invention and is inconsistent with the common usage of terms and the usage of terms within the application.

[004] The pivot arms of Moore using the labels assigned by the Examiner would comprise an upper and lower lateral frame. See Answer Figure. The upper lateral frame communicates with two upper longitudinal frames that are each all distal ends. See Answer Figure. The lower lateral frame communicates with two other lower longitudinal frames that are each all proximal ends. See Answer Figure. There is no evidence of direct communication between the upper lateral frame and upper longitudinal frames and the lower lateral frame and lower longitudinal frames.

[005] The elements identified by the Examiner do not form a horizontally disposed open rectangle. The pivot arms of Moore do not form an open rectangle as the identified upper lateral frame and upper longitudinal frames or upper pivot arm, and the lower lateral frame and lower longitudinal frames or lower pivot arm, are not in direct communication. In addition, if one were to construe the upper and lower pivot arms as an open rectangle, the rectangle would not be horizontally disposed.

[006] Appellants therefore submit that although the Examiner assigns labels to the elements of Moore that correspond to the elements of claim 1, the resulting geometry bears no resemblance to the geometry claimed in claim 1. The pivot arms of Moore do not form a second frame with "...longitudinal frames and lateral frames forming a **horizontally disposed open rectangle with a first lateral frame connecting only to a proximal end of each longitudinal frame, a second lateral frame connecting only to a distal end of each longitudinal frame...**"

[007] Appellants also assert that the Examiner's identification of the proximal ends and distal ends of the longitudinal frames is in sharp variance with common usage of the terms "proximal" and "distal" and with the usage of the terms with the present application. "Proximal" refers to near a point of origin while distal refers to away from a point of origin. The proximal end of the longitudinal frames identified by the Examiner is the whole of each longitudinal frame. In addition, the proximal ends of the longitudinal frames are near both connection points

to other members, while the distal ends of the longitudinal frames are near both of the same connection points. Thus the Examiner's assignment of proximal and distal ends is inconsistent with the common usage of "proximal" and "distal."

[008] In addition, the application uses proximal to describe ends near the cabinet 11 and distal describes ends away from the cabinet. See page 2, ¶ 28. Thus the Examiner's assignment of proximal and distal ends is inconsistent with the usage of the application. As a result, Moore fails to disclose a second frame with "...longitudinal frames and lateral frames forming a **horizontally disposed open rectangle with a first lateral frame connecting only to a proximal end of each longitudinal frame, a second lateral frame connecting only to a distal end of each longitudinal frame...**" as claimed in claims 1, 8, and 14. Appellants therefore submit rejections of claims 1, 8, and 14 are improper as Moore, Gill, Krivec, and Ku do not disclose each element of claims 1, 8, and 14, and that the rejections claims 6, 7, and 22 are also improper as claims 6, 7, and 22 depend from allowable claims.

### SUMMARY

In view of the foregoing, Appellants respectfully assert that each of the claims on appeal has been improperly rejected because the rejections under 35 U.S.C. §103(a) are improper. Therefore, Appellants respectfully request reversal of the Examiner's rejections under 35 U.S.C. §103(a), and urges that pending claims 1, 6-8, 14, and 22 are ready for prompt allowance. Appellants appeal to the Board's objective and reasoned decision on this matter.

Respectfully submitted,

/ Brian C. Kunzler /

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